

# State of Michigan

## Judicial Tenure Commission

Annual Report 2011



Judicial Tenure Commission  
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[jtc.courts.mi.gov](http://jtc.courts.mi.gov)

**COMMISSIONERS**

THOMAS J. RYAN, ESQ.  
**CHAIRPERSON**  
HON. NANCY J. GRANT  
**VICE CHAIRPERSON**  
HON. DAVID H. SAWYER  
**SECRETARY**  
HON. PABLO CORTES  
NANCY J. DIEHL, ESQ.  
DAVID T. FISCHER  
HON. JOHN D. HAMILTON  
BRENDA L. LAWRENCE  
HON. JEANNE STEMPIEN



State of Michigan

**Judicial Tenure Commission**

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**EXECUTIVE DIRECTOR**  
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July 6, 2012

Honorable Justices of the Michigan Supreme Court  
Honorable Rick Snyder, Governor  
Honorable Members of the Michigan Legislature  
Honorable Judges

I am pleased to present the Annual Report of the Michigan Judicial Tenure Commission for the year 2011. This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions.

The Commission remains committed to fulfilling its responsibilities to the People of the State of Michigan. It also takes this opportunity to thank its devoted and professional staff members for their work and assistance to the Commission this past year. It is hoped that through the vigilant and dedicated work of the Commission, the public's confidence in the integrity, independence, and fairness of the judiciary will be preserved.

Very truly yours,

A handwritten signature in black ink, appearing to be "TJ" or "TJ Ryan".

Thomas J. Ryan  
Chairperson  
For the Commission

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## **COMPOSITION OF THE COMMISSION – 2011**

**Nancy J. Diehl, Esq.**

1300 E. Lafayette, Ste. 1206  
Detroit, Michigan 48207  
Elected by State Bar Membership  
Member Since January 1, 2006  
Current Term expires December 31, 2014

**Mayor Brenda L. Lawrence**

26000 Evergreen Road  
P.O. Box 2055  
Southfield, MI 48037-2055  
Appointed by Governor  
Member Since January 1, 2011  
Current Term expires December 31, 2013

**Hon. Nanci J. Grant, Vice-Chairperson**

Chief Judge, 6<sup>th</sup> Circuit Court  
1200 N. Telegraph Road, Dept 404  
Pontiac, MI 48341  
Elected by Circuit Court Judges  
Member Since January 1, 2007  
Current Term expires December 31, 2012

**Hon. Pablo Cortes**

Judge, 62A District Court  
2650 DeHoop Ave. SW  
Grand Rapids, MI 49509  
Elected by Judges of Limited Jurisdiction  
Member Since January 2011  
Current Term expires December 31, 2013

**Hon. John D. Hamilton**

Chief Judge, Iosco County Probate Court  
422 Lake, POB 421  
Tawas City, MI 48764  
Elected by Probate Judges  
Member Since January, 2011  
Current Term expires December 31, 2014

**Richard W. Long**

c/o 3034 W. Grand Blvd., Suite 8-450  
Detroit, Michigan 48202  
Appointed by Governor  
Member Since November 6, 2009  
Term expired December 31, 2011

**Thomas J. Ryan, Chairperson**

2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320  
Elected by State Bar of Michigan  
Member Since January 1, 2005  
Current Term expires December 31, 2013

**Hon. Jeanne Stempien**

Judge, 3<sup>rd</sup> Circuit Court  
2 Woodward, Room 1719 CAYMC  
Detroit, Michigan 48226  
Elected By State Bar Membership  
Member Since January 1, 2004  
Current Term expires December 31, 2012

**Hon. David H. Sawyer, Secretary**

Judge, Michigan Court of Appeals  
3020 W. Grand Boulevard  
Grand Rapids, MI 49503  
Elected by Court of Appeals Judges  
Member Since January 1, 2010  
Current Term expires December 31, 2012

## BIOGRAPHIES \*

**Hon. Pablo Cortes** Hon. Pablo Cortes is a District Court Judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006 and 2008. From 1995 until taking the bench, Judge Cortes served as an Assistant Prosecuting Attorney for Kent County. Judge Cortes graduated from the University of Michigan in Ann Arbor with honors in 1989 and from Wayne State University Law School in Detroit in 1995. He was elected to the Judicial Tenure Commission in 2010. Aside from his service on the commission and various community groups, Judge Cortes serves on the board of the Michigan District Court Judges Association and its Legislative Committee. He is also an Adjunct Professor at both the Thomas M. Cooley Law School in Grand Rapids and the Grand Rapids Community College Police Academy.

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**Nancy J. Diehl, Esq.** Nancy J. Diehl, Esq. retired from the Wayne County Prosecutor's Office in 2009. Her prosecution career spanned 28 years and her last position was as Chief of the Trial Division, overseeing general trials, child and family abuse, homicide, auto theft, and major drugs. Ms. Diehl serves on the executive committee of the Governor's Task Force on Children's Justice and is past president of the State Bar of Michigan. Fellow members of the State Bar of Michigan elected her to the Judicial Tenure Commission for a term beginning January 1, 2006. She is currently serving her third term, which began on January 1, 2012. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University.

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**Hon. Nanci J. Grant** is an Oakland County Circuit Court Judge. She was elected by the state's Circuit Judges to the Judicial Tenure Commission for the term commencing January 1, 2007. Judge Grant received her Bachelor of Arts Degree from The University of Michigan, where she graduated with honors, and her Juris Doctor from Wayne State University. She worked in private practice prior to being elected to the bench in 1996. Judge Grant served as President of the Michigan Judges Association. Judge Grant is the Chief Judge of the Sixth Circuit Court of Michigan and served as the Commission's Secretary, and currently serves as the Commission's Vice-Chairperson.

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**Hon. John D. Hamilton** is serving his third term as Chief Judge of Probate for the County of Iosco and Presiding Judge of Iosco Family Court in the 23rd Judicial Circuit. He was elected to the Judicial Tenure Commission by his fellow Probate Court Judges for a term that began on January 1, 2011. Judge Hamilton graduated from Michigan State University in 1974 and from the Detroit College of Law in 1977. Prior to being elected to the bench, he had a private law practice in East Tawas specializing in banking, corporate, probate, and family law. He is Past President of the National MSU Alumni Association, organizer and Past President of the Iosco County MSU Alumni Association, past board member and officer of the Tawas Area Chamber of Commerce, Past President and Officer of the Tawas Area Lion's Club, and a member of numerous civic/service organizations and clubs. He has been married for 33 years to his wife Jeanne (a retired teacher) and has two married daughters and two grandchildren.

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**Brenda Lawrence** Mayor Brenda L. Lawrence is a long-time resident of the City of Southfield. A product of Michigan's public school system, Mayor Lawrence is an alumna of Pershing High School and received her BA in Public Administration from Central Michigan University. Ms. Lawrence was elected Mayor of the City of Southfield in November of 2001. She is the first African American and

first woman mayor of Southfield, a city with a population of over 78,000 residents, a city budget of \$143 million, and 833 city employees. Mayor Lawrence is committed to diversity, fiscal responsibility, education, and keeping a clean and safe city.

Mayor Lawrence has received many honors for her leadership skills and commitment to diversity. She was recognized in October 2007 as one of Crain's "2007 Most Influential Women." Through a survey of area leadership organizations, Ms. Lawrence was identified by Crain's Detroit Business as a regional leader with the "skills and determination to bridge the historic parochialism of the metropolitan area."

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**Richard W. Long** retired in 2009 as National CAP director of the UAW International Union. Dick's automotive career began in 1963 with Pontiac Motor Division. He became a journeyman electrician in 1971, and soon became involved in union activities. Dick became president of UAW Local 653 in 1988, served as chairman of Sub Council 7 (the largest sub council in the UAW), and chaired the UAW/General Motors contract negotiations in 1993. In 1998, Dick was appointed as the Administrative Assistant to the President of UAW International, preceding his service as National CAP director beginning in 2000.

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**Thomas J. Ryan, Esq.** is a member of the State Bar of Michigan, Oakland County Bar Association, and the Oakland County Ancient Order of Hibernians. Mr. Ryan is a past president of the State Bar of Michigan serving as its 66<sup>th</sup> President from September 2000, to September 2001. Mr. Ryan served on the Oakland County Bar Association's Board of Directors and was its President from 1993 to 1994. He received his Undergraduate Degree from the University of Notre Dame and his law degree from the University of Detroit Mercy. Mr. Ryan has been in the private practice of law since January, 1977, and is the attorney for the Village of Beverly Hills, City of Keego Harbor, City of the Village of Clarkston, and the City of Orchard Lake Village from May 2001 to April 2011, as well as the prosecuting attorney for the Township of Bloomfield, from July, 1978 to October, 2006. Mr. Ryan served as the Commission's Vice Chairperson, and currently serves as the Commission's Chairperson.

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**Hon. David H. Sawyer** was elected to the Court of Appeals in 1986. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2010, and currently serves as the Commission's Secretary. Judge Sawyer currently is Chief Judge Pro Tem of the Michigan Court of Appeals. Before being elected to the bench, he was the Kent County Prosecuting Attorney from 1977 to 1987. Judge Sawyer is a Past President of the Michigan Prosecuting Attorneys Association. He received his Bachelor of Science degree from the University of Arizona in 1970 and received his law degree from Valparaiso University School of Law in 1973.

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**Hon. Jeanne Stempien** is the Presiding Judge of the Civil Division of the Wayne County Circuit Court. She was elected to the Judicial Tenure Commission commencing January 1, 2004 and served as the Commission's Chairperson for 2007. Judge Stempien received a Bachelor of Arts with Honors from the University of Michigan, Dearborn and a Juris Doctor, Magna Cum Laude, from the Detroit College of Law. In the past, Judge Stempien was elected the Chairperson of the Schoolcraft College Board of Trustees. Judge Stempien served as a facilitator for the National Judicial College and is currently a member of the Inns of Court, an advocacy program for law students



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## 2011 JTC Commissioners



(Seated) Hon. Nanci J. Grant (Vice Chairperson)	Thomas J. Ryan, Esq., (Chairperson)	Hon. David H. Sawyer (Secretary)
Nancy J. Diehl, Paul J. Fischer	Brenda L. Lawrence, Richard Long	Hon. Jeanne Stempien, Hon. John D. Hamilton
		Hon. Pablo Cortes



## **I. COMMISSION JURISDICTION AND LEGAL AUTHORITY**

### **A. The Authority of the Judicial Tenure Commission**

**T**he Judicial Tenure Commission is an independent state commission that came into being in 1968 by amendment to the Michigan Constitution. The Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, and recommends sanctions to the Michigan Supreme Court. The Commission's objective is to enforce high standards of ethical conduct for judges. On the one hand, judges must be free to act independently on the merits of the case and in good faith. However, they must also be held accountable by an independent disciplinary system should they commit misconduct. The judicial discipline system must not only fulfill its primary purpose – to protect the public and preserve the institutional integrity of the judiciary – but also serve to shield judges from attack by unsubstantiated complaints.

The Commission has jurisdiction over all active state judges. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge was still in office. If the matter complained about relates to the former judge's tenure as a judge, the request for investigation may even be filed after the person is no longer a judge.

The Commission does not have jurisdiction over federal judges or administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like. This section describes the Commission's handling and disposition of complaints involving judges.

### **B. What the Commission Cannot Do**

The Commission is not an appellate court. The Commission cannot change a judicial officer's decision. If a court makes an incorrect decision or misapplies the law, that ruling can be changed only through the appellate process. The Commission also cannot get a judge taken off a case or have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

### **C. Judicial Misconduct**

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, recommending the imposition of discipline by the Michigan Supreme Court. Judicial misconduct and disability usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include demeanor problems (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about the pending case. Judicial misconduct also may involve improper off-the-bench conduct.

## **D. Legal Authority**

### **1. Michigan Constitution**

The Judicial Tenure Commission was established by an amendment to the Michigan Constitution by the people of Michigan in 1968. The Commission's authority is set forth in article 6, section 30 of the Michigan Constitution. The provisions governing the Commission may be found on the Commission's web site ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

### **2. Michigan Court Rules**

Article 6, section 30 of the Constitution authorizes the Michigan Supreme Court to make rules to implement the constitutional directive. Chapter 9.200 of the Michigan Court Rules sets forth the applicable procedures. A copy of those rules may be found on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

### **3. Code of Judicial Conduct**

The Michigan Supreme Court has adopted the Code of Judicial Conduct, most recently in 1993. 443 Mich ii (1993). The Court from time-to-time effects changes in the Code. A copy of the most recent Code may be found on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

## **E. Recent and Anticipated Changes at the Commission**

The Commission bid farewell to Richard Long, and welcomes his successor David T. Fischer, appointed by Governor Rick Snyder. Judge John D. Hamilton and Brenda L. Lawrence joined the Commission in January, 2011.

## **II. OVERVIEW OF THE COMPLAINT PROCESS**

### **A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION**

Anyone may file a request for investigation (or "grievance") against a judge on the Commission's complaint form, a sample of which is on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)). The court rules require that the person filing the grievance ("the grievant") have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn to the truthfulness of the statements made in the grievance. The Commission may institute an investigation on its own, or at the request of the Chief Justice of the Michigan Supreme Court or the State Court Administrator. The Commission may also consider complaints made anonymously, and it may open a file into matters it learns of in other ways, such as news articles or information received in the course of a Commission investigation.

## B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION

Upon receipt, each properly executed grievance about a Michigan judge is carefully reviewed by the staff, along with any supporting documents or other evidence. The staff may review the court file if that would be helpful. The staff also requests any additional information from the grievant needed to evaluate the grievance. The staff may not pursue any further investigation without authorization by the Commission.

Based on an assessment of the initial information, the staff prepares a report for the Commission recommending a course of action. Each grievance is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant further investigation.

### 1. Investigation at the Commission's Direction

When the Commission determines that a complaint warrants investigation, the Commission directs the staff to investigate the matter and report back. The Commission will give the staff specific instructions on how to conduct each investigation.

### 2. Disposition of Cases Without Formal Proceedings

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the grievance, it may be closed without the need to contact the judge before doing so. Unless the Commission determines otherwise, the judge is given a copy of the grievance upon closing the case.

At times the judge may be asked to comment on the allegations, in which case the judge is given a copy of the grievance as part of the investigation. The Commission may limit the inquiry to the judge to a particular aspect of the grievance. The judge's response is then considered along with all other information. This initial comment from the judge is generally viewed as an investigatory aid (pursuant to MCR 9.207[C][2], rather than as a necessary precursor to a formal complaint pursuant to MCR 9.207[C][1]).

## C. ACTION THE COMMISSION CAN TAKE

### 1. Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If after an investigation, the Commission determines that there was no judicial misconduct, but that certain actions of the

#### Action the Commission Can Take

- Dismissal
- Dismissal with Explanation
- Dismissal with Caution
- Dismissal with Admonition
- Recommend Private/Public Censure, Suspension or Removal to Supreme Court

judge should preferably not be repeated, the Commission may dismiss the matter with a letter of explanation. If after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may dismiss the matter with a cautionary letter to the judge. In cautionary letters, the Commission will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may dismiss the matter with an admonishment. Private admonishments from the Commission are designed in part to bring problems to a judge's attention at an early stage in the hope that the conduct will not be repeated or escalate. A private admonishment consists of a notice to the judge containing a description of the improper conduct and the conclusions reached by the Commission. A judge has the right to challenge an admonishment in the Supreme Court, which then issues a public decision approving or rejecting the Commission's action. Letters of explanation, caution, and admonishment are not issued until the respondent judge is offered the opportunity to explain what happened.

Letters of explanation, caution, and admonishment are confidential, and they are not "discipline." Due to the rules of confidentiality, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the action taken. Summaries of conduct that resulted in such letters issued in 2011 are contained in Section IV.

## **2. Public Dispositions**

### **a. The Formal Complaint**

When formal proceedings are instituted, the Commission issues a formal complaint, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 14 days after service of the notice. The formal complaint, the judge's answer, and all subsequent pleadings are public documents, available for inspection at the Commission's office. To the extent practicable, they are also placed on the Commission's web site ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

The rules provide for some discovery between the parties after formal proceedings are instituted. A judge is entitled to inspect and copy all documentary evidence in the Commission's possession that is to be introduced at the hearing on the formal complaint. The Commission must also give the judge the name and address of any person to be called as a witness.

The Commission may petition the Supreme Court for an interim order suspending a judge pending final adjudication of a formal complaint when necessary for the proper administration of justice. MCR 9.219.

### **b. Hearing**

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint a master to hear and take evidence in the matter and to report to the Commission. Masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. MCR 9.211(A).

### **c. Standard of Proof**

The standard of proof in Commission proceedings is by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998).

### **d. Commission Consideration Following Hearing by Master**

Following the hearing on the formal complaint, the master files a report with the Commission. The report includes a statement of the proceedings and the master's findings of fact and conclusions of law with respect to the issues presented by the formal complaint and the judge's answer.

Upon receipt of the master's report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to present oral arguments before the Commission.

### **e. Disposition after Hearing by Commission**

The Commission may dismiss the matter if it determines that there has been insufficient evidence of misconduct after conducting the evidentiary hearing itself or after reviewing the master's findings. However, if the Commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court impose discipline against the judge. The Commission itself has no authority to discipline a judge; the Michigan Constitution reserves that role for the Supreme Court. The Commission may recommend that the Court publicly censure a judge, impose a term of suspension, or retire or remove the judge from office. The Commission issues a Decision and Recommendation, which triggers the next series of steps.

### **f. The Supreme Court Hearing**

Within 21 days after issuing its Decision and Recommendation, the Commission files the original record in the Supreme Court and serves a copy on the judge. Within 28 days after that, the judge may file a petition in the Supreme Court to modify or reject the Commission's Decision and Recommendation. The Commission has 21 days to respond with a brief of its own supporting its finding. Even if the judge does not file a petition, the Supreme Court reviews the Commission's Decision and Recommendation.

The Court clerk places the matter on the Court calendar. The judge and the Commission have an opportunity to present oral arguments to the Court, which reviews the record on a *de novo* basis. *In re Ferrara*, 458 Mich 350 (1998). After reviewing the record, the Court issues an opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action, or rejecting or modifying the Commission's Decision and Recommendation. The court rules allow a

judge to file a motion for rehearing in the Supreme Court unless the Court directs otherwise in its opinion.

#### **D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS**

The Michigan Constitution authorizes the Supreme Court to provide for the confidentiality of complaints to and investigations by the Commission, Michigan Constitution; article 6, section 30. The court rules provide that complaints and investigations are confidential, subject to certain exceptions, unless and until a formal complaint is issued. MCR 9.221.

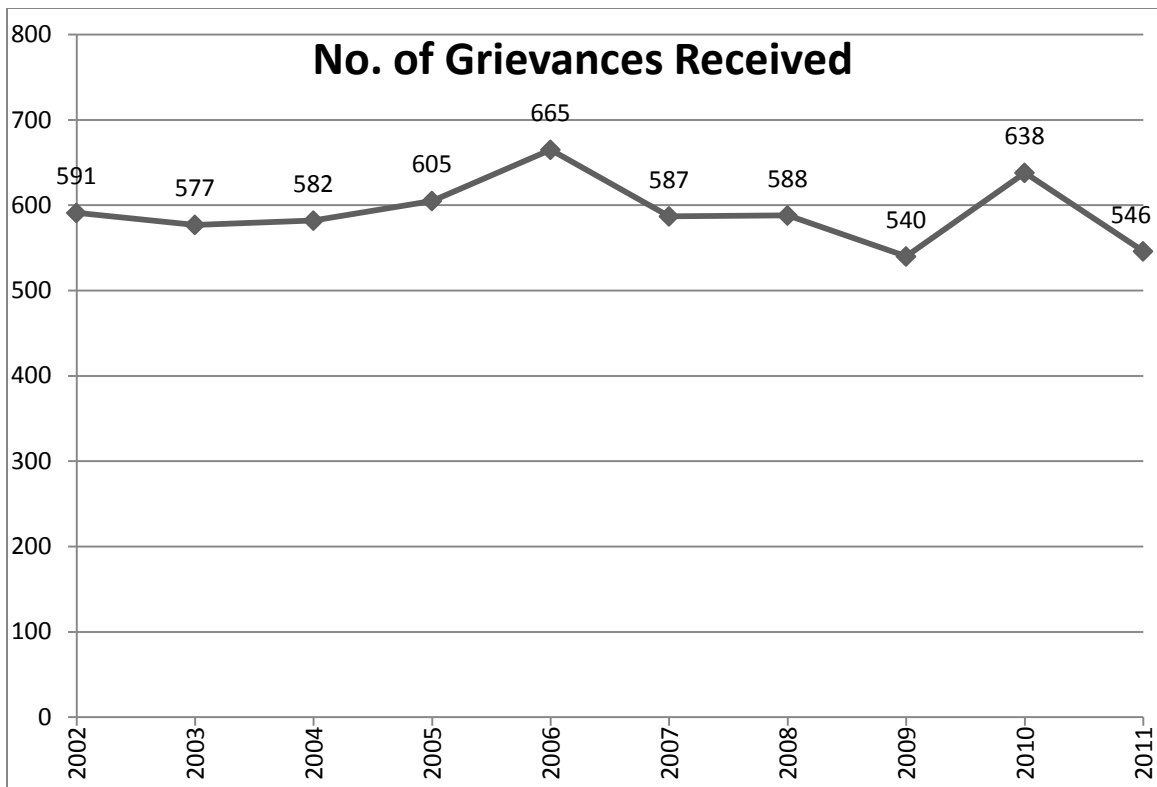
The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission's statement, if any, is limited to the fact that (1) there is an investigation pending or (2) the investigation is complete and there appears to be insufficient evidence for the Commission to file a complaint. The court rules provide that when formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public. MCR 9.221(B).

### **III. 2011 STATISTICS**

#### **A. COMPLAINTS RECEIVED AND INVESTIGATED**

**I**n 2011, the Commission received 849 requests for "Requests for Investigation" forms. There were 546 Requests for Investigation filed in 2011.

<b>2011 CASELOAD</b>	
Cases Pending on 1/1/11	105
New Grievances Considered	546
Cases Concluded in 2011	554
Cases Pending on 12/31/11	98



The grievances set forth a wide array of allegations. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties. The Commission also received grievances concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, the Commission made referrals.

The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1,259. The breakdown of judicial officers is set forth below, with the difference representing magistrates and referees within the Commission's jurisdiction.

#### Trial Judges

<u>Region</u>	<u>Circuit</u>	<u>Probate</u>	<u>District</u>	<u>Municipal</u>	<u>Total</u>
1	111	22	143	4	280
2	57	26	66		149
3	32	26	29		87
4	19	28	18		65
<b>Total</b>	<b>219</b>	<b>102</b>	<b>256</b>	<b>4</b>	<b>581</b>

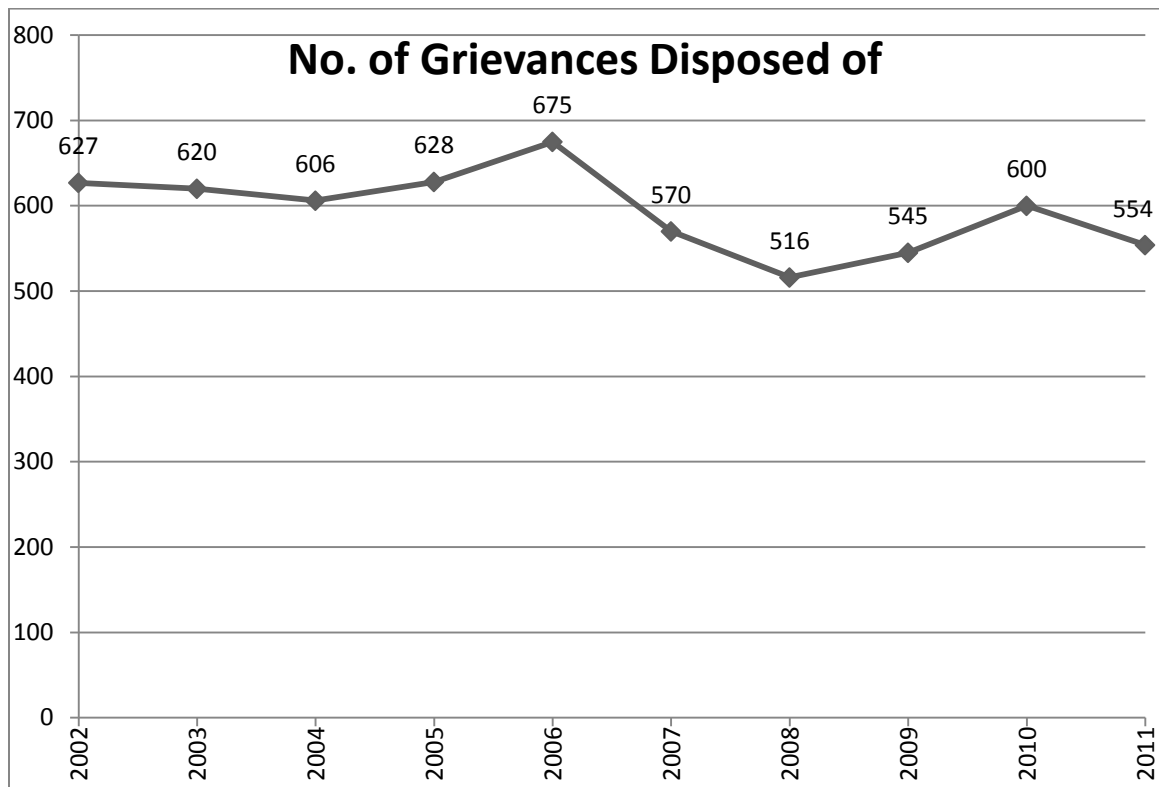
#### Judges Statewide

Supreme Court	7
Court of Appeals	28
Trial Courts	581
<b>Total</b>	<b>616</b>



## B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2011, regardless of when the complaints were received. In 2011, the Commission disposed of 554 cases.



## C. CLOSED WITHOUT ACTION

In 534 of the 554 cases closed in 2011, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. In other words, these files alleged facts that, even if true, would not constitute judicial misconduct. Investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

## D. CLOSED WITH ACTION

In 2011, the Commission issued eight letters of admonishment, eight letters of caution, and three letters of explanation. Each of these dispositions is summarized in Section IV.

## E. FORMAL COMPLAINTS

The Commission considered two formal complaints in 2011. They are summarized in Section IV.

Formal Complaint No. 87 – Hon. James Justin

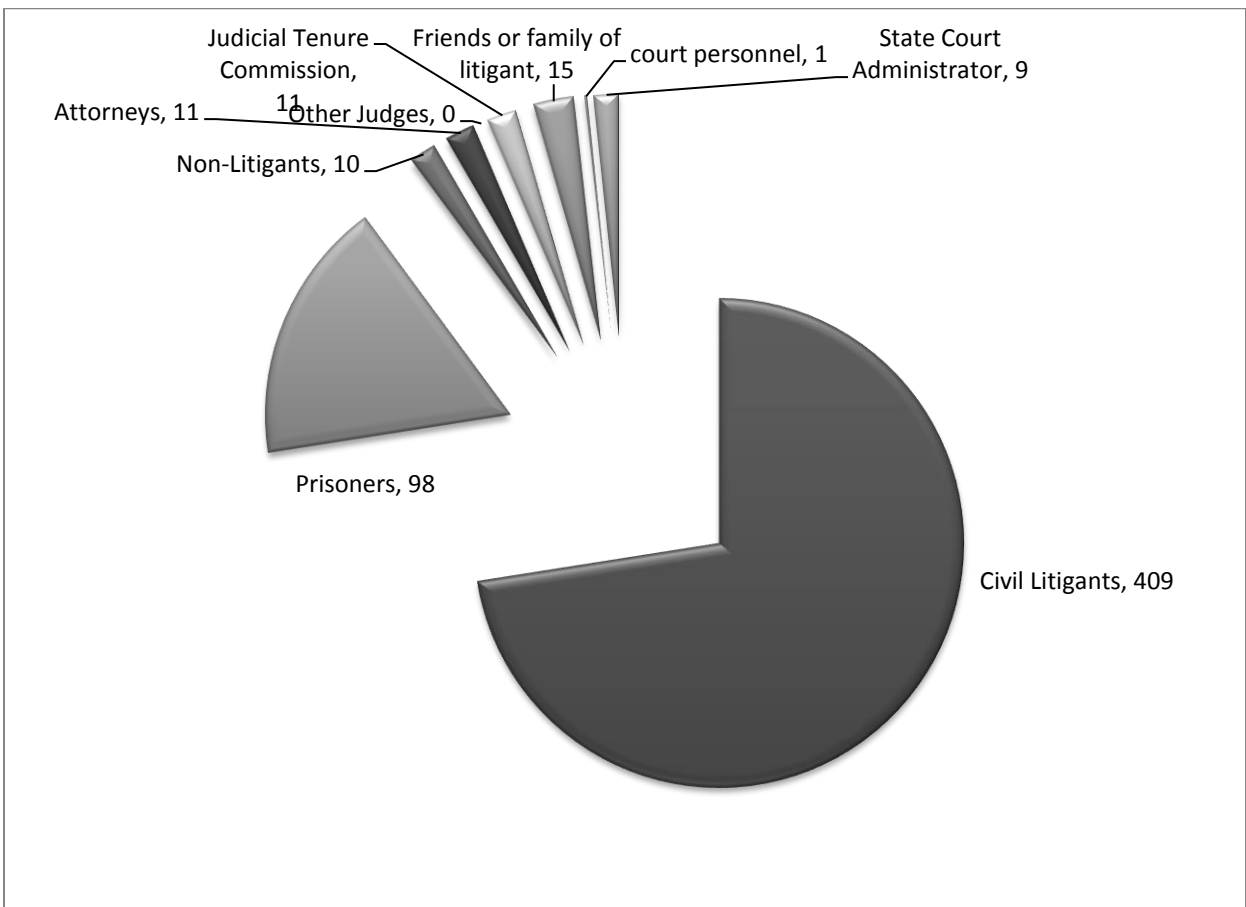
Formal Complaint No. 88 – Hon. Sylvia James

## F. SUMMARY OF GRIEVANCES CONSIDERED IN 2011

The 546 requests for investigation received by the Commission derived from the following sources, covered the following subject matter, and were lodged against the following types of judges. The totals may not equal 546, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

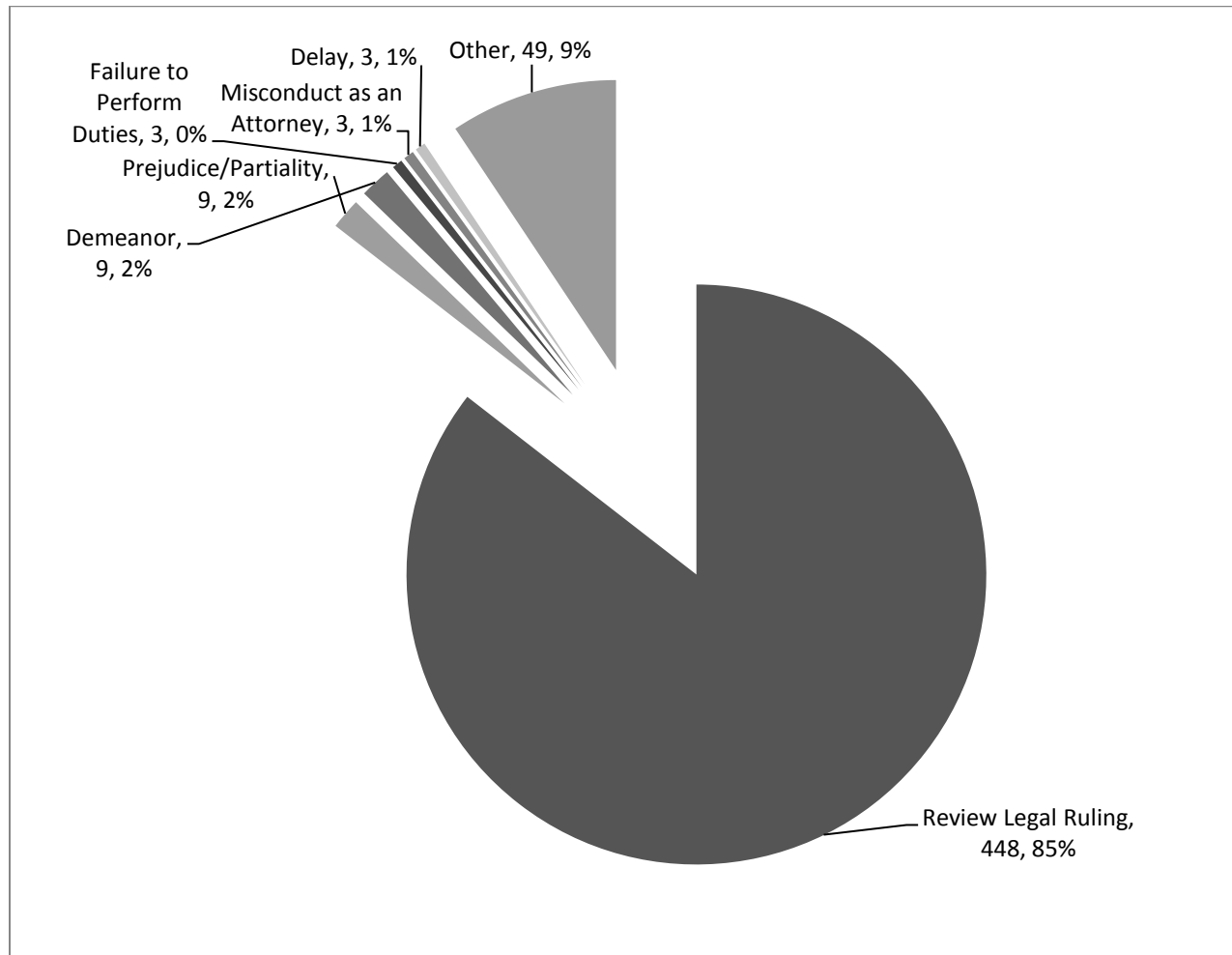
## G. SOURCES OF GRIEVANCES

Litigants (including prisoners) filed the majority of requests for investigation, 90% of the total.



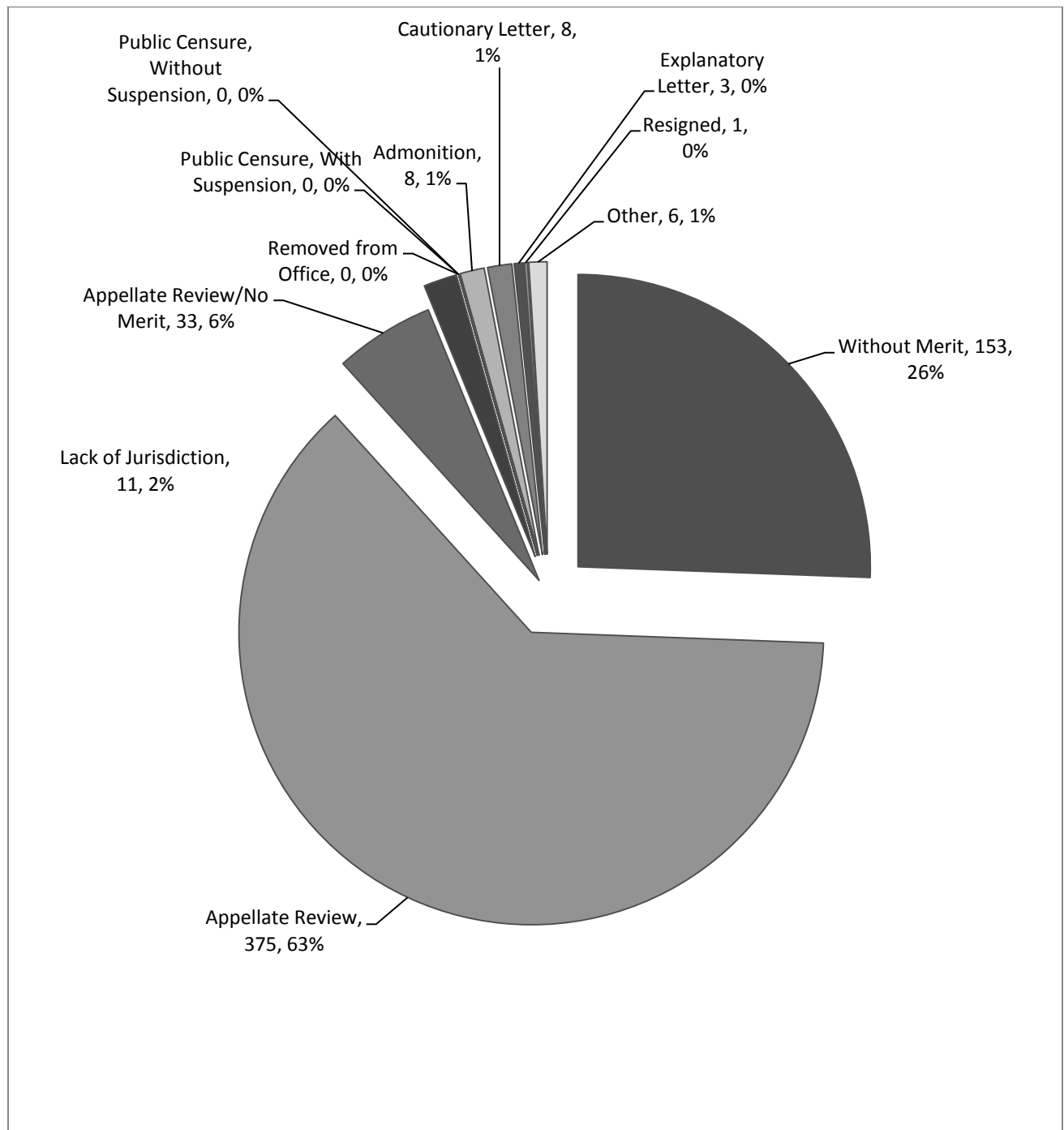
## H. SUBJECT MATTER OF GRIEVANCES

Nearly 85% of matters complained of in the Requests for Investigation sought to have the Commission review the merits of the underlying case. However, the Commission has no jurisdiction to act as an appellate body, so unless there was evidence of judicial misconduct, those matters were ultimately dismissed.



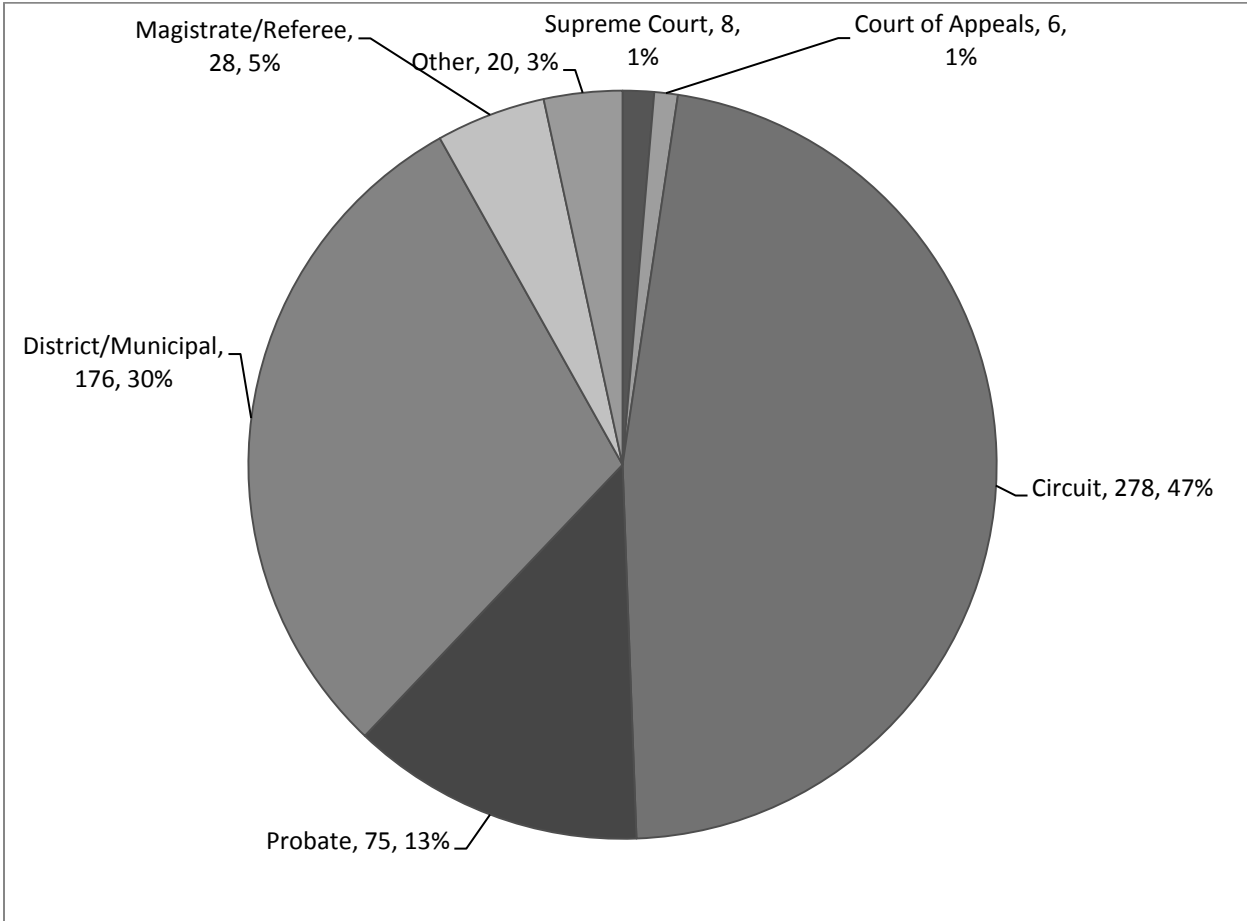
## I. NATURE OF UNDERLYING LITIGATION

Criminal cases, domestic relations matters, and general civil cases continue to be the most common types of cases to produce grievances against the judge.



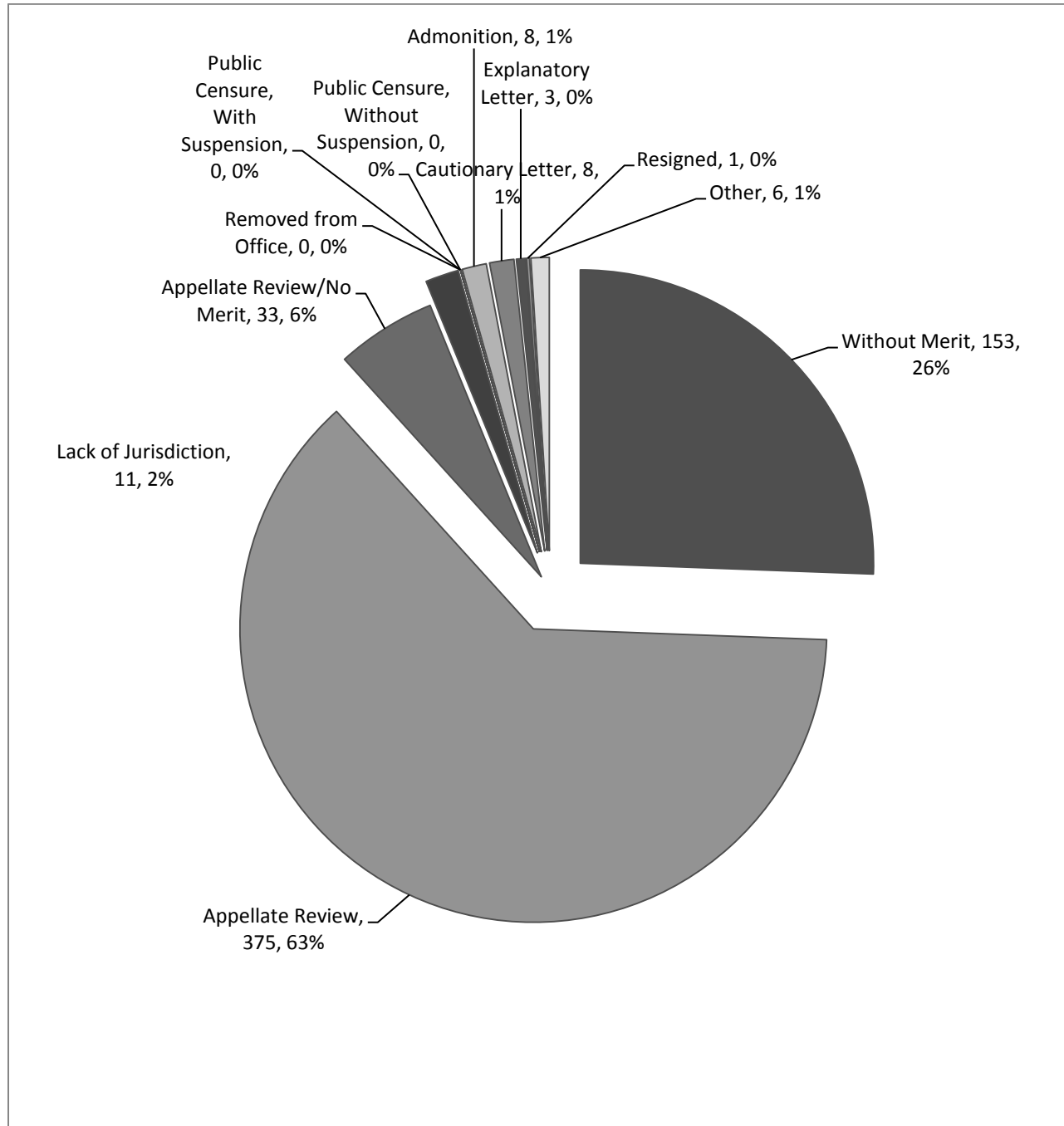
## J. CATEGORIES OF RESPONDENT JUDGES

The circuit judges, who comprise about one-fifth of the judiciary, received about half of the grievances. This is most likely due to the circuit judges handling so much of the criminal and domestic relations dockets, which together generate more than half of the grievances. District court judges, who comprise nearly 25% of the judiciary, received a proportionate 25% of the grievances filed.



## K. DISPOSITIONAL BREAKDOWN

There were no public censures by the Michigan Supreme Court, and there was one voluntary resignation or retirement in 2011. The Commission issued three letters of explanation, eight letters of caution and eight letters of admonition in matters that did not rise to the level warranting formal complaints.



## IV. CASE SUMMARIES

### A. PUBLIC PROCEEDINGS

#### FORMAL COMPLAINTS

##### 1. Formal Complaint No. 87, Hon. James M. Justin 12<sup>th</sup> District Court

On November 10, 2010, the Commission filed Formal Complaint No. 87 against Judge James M. Justin of the 12th District Court. The complaint alleged that Judge Justin improperly dismissed traffic tickets, engaged in ex parte communications, violated the law regarding sending abstracts of convictions to the Secretary of State, improperly disregarded plea agreements, excessively delayed cases, violated the law in issuing peace bonds, interfered in a case assigned to another judge, and made misrepresentations to the Commission. The Michigan Supreme Court, upon petition of the Commission, had suspended Judge Justin with pay on July 19, 2010 until further order of the Court.

On November 29, 2010, pursuant to the Commission's petition filed with the formal complaint, the Supreme Court appointed Hon. Pamela J. McCabe as Master to conduct the public hearing on the formal complaint. Judge Justin's Motion in Limine was argued January 18, 2011 and denied by the Master. The hearing on the formal complaint commenced on January 24, 2011 and was completed on February 1. On March 24, 2011 the Master issued her report, finding that Judge Justin committed judicial misconduct in seven of the eight counts in the formal complaints. The Master found that Judge Justin improperly dismissed cases, including tickets issued to his wife, his court staff, and himself. The Master also found that Judge Justin violated the law by stopping abstracts of convictions from being sent to the Secretary of State and deleting abstracts from valid convictions that had been properly sent. The Master found that Judge Justin improperly disregarded plea agreements, engaged in ex parte communications, excessively delayed cases, interfered in a case assigned to another judge, and made material misrepresentations to the Commission and in his testimony during the hearing.

The Master found that Judge Justin did not commit misconduct regarding his practice of issuing peace bonds.

On May 9, 2011, the Commission heard oral arguments on Judge Justin's Objections to the Master's report. On June 13, 2011, the Commission issued its Decision and Recommendation for Discipline. The Commission adopted the Master's Findings of Facts and Conclusions of Law, and unanimously recommended that Judge Justin be removed from office and ordered to pay costs.

On October 5, 2011 the Michigan Supreme Court heard oral arguments on Judge Justin's Petition to Modify the Commission's Recommendation for Discipline. The Court issued its Opinion and Order on January 27, 2012, finding that Judge Justin committed judicial misconduct and ordering him removed from office. The Court also assessed him \$7,657.86



## **2. Formal Complaint No. 88, Hon. Sylvia James 22<sup>nd</sup> District Court**

On October 26, 2011, the Commission filed Formal Complaint No. 88 against Judge Sylvia A. James of the 22<sup>nd</sup> District Court, together with a Petition for Interim Suspension and a Request for Appointment of Master. The complaint alleged that Judge James engaged in financial, employment and administrative improprieties while serving in her judicial capacity. More specifically, the complaint alleged that Judge James misappropriated funds from the court's Community Service Program and withheld other funds from the funding authority, the City of Inkster. The complaint alleged that Judge James hired and promoted her niece in violation of the administrative orders of the Michigan Supreme Court, and appointed a magistrate who did not meet the statutory requirements for the position. The complaint also alleged that Judge James failed to timely dispose of the cases of the 22<sup>nd</sup> District Court, took excessive time away from her judicial position, and implemented an improper "business attire" policy at the courthouse. Finally, the complaint alleged that Judge James had made serious misrepresentations to the Commission during the course of the investigation into the matter.

On November 9, 2011, Judge James had filed her answer and affirmative defenses together with a response to the Petition for Interim Suspension and the Request for Appointment of Master. On December 15, 2011, the Michigan Supreme Court issued an order appointing the Honorable Ann Mattson as a Master to hear Formal Complaint and an order granting the Petition for Interim Suspension. On December 19, 2011, the Commission, by and through its Chairperson, Thomas J. Ryan, issued an order, setting forth deadline dates for the formal hearing as well as for the submission of reports and decisions. The second order, issued by the Master, Hon. Ann Mattson, set deadlines for the exchange of witness lists and exhibits, the filing of motions, and for pre-trial dates. As of December 31, 2011, the formal hearing on Complaint No. 88 was scheduled to begin on January 23, 2012.

## **B. NON-PUBLIC PROCEEDINGS**

### **1. *Demeanor***

- A judge was reproached regarding the judge's demeanor and language in court for calling a litigant angry and bitter, and a "baby." The judge also stated "Please get out of my courtroom; I --- I don't want to look at you." The Commission recognized that emotions can become volatile in court, but that the Code of Judicial Conduct canons hold judges to a higher standard of behavior than the public, and a judge should not allow emotion to cause him or her to disregard the ethical standards of Canon 3A(3) of the Code of Judicial Conduct, which requires judges to be patient, dignified, and courteous to litigants and others who appear before them.
- A judge made inappropriate statements to litigants in several cases. The judge suggested one litigant have her teeth "fixed," and asked if she was "a little self-conscious" about them, unnecessarily bringing her appearance to the attention of those in the courtroom. The Commission noted that statements to a litigant describing conduct as getting his "brains knocked out in a bar" and "feeding" a brain injury alcohol were somewhat disparaging. The judge's inquiry to another litigant, as to whether she considered putting her child up for adoption, implied that she was not a capable mother, did not relate to the case before the judge, and should not have been made by the judge.

The Commission acknowledged the judge's representations that the remarks may have embarrassed or hurt the defendants, that the judge would diligently act in the future to refrain from repeating similar comments, and that the judge would increase his/her efforts to be dignified and courteous to those who appear before the judge.

### **2. *Treatment of Others when Acting in Judicial Capacity***

- The Commission reproached a judge for the judge's angry comments made off the bench, when the judge was attempting to compel an employee of a government agency to assist in the service of a personal protection order. The judge was advised by another individual of the proper procedures to effectuate service, and of the restrictions on the agency's involvement in those matters, but refused to accept the representations as they were made by a lay person. The Commission noted that if the judge believed the government employee was misstating policy, it was not a sound rule, or had any other concerns regarding the remarks, the judge's recourse clearly was not to treat the employee in a demeaning manner, and make threats of public exposure if harm came to the PPO petitioner. Rather, an appropriate response would have been for the judge to raise concerns with an agency supervisor.

### **3. *Treatment of Others When Acting in an Administrative Capacity***

- A judge made disparaging comments regarding a lower court in an appeal of a criminal misdemeanor, which exceeded the legal and factual merits relevant to the underlying case. The judge stated that the defendant's father led a "charmed life" as he had not appeared before the judges of the lower court, thereby implying he would have a bad experience if he did. Although the judge correctly stated that it was not the judge's place to "take a stand" in the case, the judge then advised the father to vote the judges out of office. The judge should have limited the judge's comments to the facts and law.

### **4. *Delay***

- A judge was reproached regarding conduct in three cases, involving delays of eight months in issuing an opinion and judgment of divorce, six months in issuing a decision on a petition to hold the opposing party in contempt regarding a judgment of divorce (the motion was pending 11 months), and six months on a motion to change domicile (which was pending a total of 14 months). The judge accepted responsibility for the delay, and the Commission directed the judge to insure that in the future, all pending matters were tracked and decisions were rendered in a timely manner.

### **5. *Disqualification/Failure to Disclose Relationship***

- A judge failed to disclose that an attorney, who regularly appeared before the judge, was an office tenant in a building owned by the judge. The individuals had an ongoing financial relationship that created an appearance of impropriety, particularly due to the judge's regular appointment of the attorney to cases. The Commission noted that any increase in the number of appointments created more income for the attorney, and more funds to pay rent to the judge. The Commission advised the judge to refrain from renting any premises in which the judge owned an interest to any attorney who appeared before the judge. Further, if the judge did rent space to an attorney, the judge should not appoint that attorney as counsel in cases. If an attorney who is a tenant ever appeared before the judge, the judge was obligated to disclose the landlord/tenant relationship on the record.
- A judge had an ownership interest in, and strong family ties to, a local bank. The judge did not disclose the relationship in a divorce proceeding, where the parties had several loans with the bank. The Commission determined that contrary to the judge's assertion, the bank had an interest in the outcome of cases when the bank (although not a party) held a loan at issue (such as a mortgage loan being addressed in a divorce proceeding). Therefore, the

judge's decision in those matters could impact the ability of the parties to repay the bank.

The Commission noted that the most effective resolutions to that issue (such as divestiture or repeated disqualifications) were not practical, and advised the judge to disclose the family relationship to the bank in any case where the judge learned that it had an interest. The Commission defined "interest" as any matter where the judge's decisions regarding financial issues may impact the ability of a party to meet an obligation owed to the bank, or any case where the bank was named as a party. The judge could preside if he/she could make unbiased decisions, *and* all parties gave their consent.

- The Commission reproached a magistrate who issued a search warrant presented by a police officer related to the magistrate by marriage. The Commission determined that the magistrate's failure to disqualify himself/herself violated MCR 2.003 (C) (1)(g) and MCJC Canon 2 (C), which require a judge not to allow family, social or other relationship to influence judicial conduct or judgment, and noted that the scenario required the disqualification of the magistrate from issuing search warrants presented by the relative.

#### **6. *Failure to follow the law or maintain competence in it (conduct on the bench)***

- A judge treated the appointment of defense counsel for an oral argument regarding a motion for relief from judgment as discretionary under MCR 6.505(A), when under the circumstances it was not. The defendant raised a request for counsel four times (once in writing and three times orally), before the judge acknowledged it. Once the judge realized that the defendant had made a proper request for counsel, the judge should have adjourned the matter to appoint an attorney, and restart the hearing. The judge failed to obtain the consent of the defendant to proceeding without representation.
- A judge admitted not being aware of the standards for service of process, and of the fact that the judge should not be involved in service of a personal protection order. The judge was advised of the procedures to effectuate service, and of the restrictions on other entities of involvement in those matters, but refused to accept the representations as they were made by a lay person. The judge failed to take steps to consult statutes, court rules, and PPO instructions issued by SCAO and maintained by circuit courts, to confirm the procedures regarding service, and that he/she should not be involved. The Commission noted that the judge's lack of knowledge regarding the matter was somewhat remarkable, and cause for concern.

- The Commission reproached a judge for refusing to permit a police officer to retain the evidence of an alleged felony (which was the duty of the officer). The judge removed evidence from the officer's possession, in violation of MCL 750.483a(5), which prohibited it from being preserved for an investigation and possible future judicial proceeding. The judge's directive to return the document to a defendant, and prohibiting the officer from making a photocopy, was improper.
- A judge failed to permit a party's attorney to present a defense at a show-cause hearing, held to determine whether the party had violated a personal protection order. The judge's actions violated the individual's due process rights as allowing a party to present a defense is a basic tenet of the law, which should have been known to the judge.
- The Commission reproached a judge for making remarks during an evidentiary hearing which created the appearance to an attorney (and his client) that his opportunity to conduct cross-examination, and to call witnesses of his choosing, would be improperly limited. Instead of answering "yes" to counsel's inquiries about having an opportunity to cross examine, the judge provided qualified responses. The judge also made statements regarding the testimony of proposed witnesses which caused the attorney to believe that the judge pre-determined relevance of testimony and bias of the witnesses, based merely on relationships to the parties, instead of the content of testimony.
- The Commission reproached a judge for instituting a policy whereby once a defendant requests and receives a court appointed attorney, a retained counsel is not permitted to file an appearance until the court attorney fees are paid in full. The Commission determined that the policy is in violation of the 6<sup>th</sup> Amendment as well as statutory and case law by punishing indigent defendants whose families make the financial sacrifice to hire a lawyer for their loved one. The Commission further noted that although a judge may impose costs for a court appointed attorney as a part of the sentence, the payment of these costs cannot be a prerequisite to a defendant's right to be represented by an attorney of his or her choice.
- The Commission reproached a judge for repeatedly misrepresenting the evidence, failing to follow the law, and considering ex-parte information outside of a hearing and pleadings when deciding termination of parental rights cases. The Commission noted that although the judge may have believed to be acting in the best interests of the child, it could not overlook the judge's tendency to gloss over facts or misrepresent them to support that belief. It also emphasized that the fact that rulings or issues may be appropriate for appellate review does not deprive the Commission of its ability to examine judicial conduct or legal rulings incident to a complaint of

judicial misconduct, pursuant to MCR 9.203 (B), even though it may result in overlapping considerations of the same issues.

**7. *Failure to respect and observe the law (conduct off the bench)***

- A judge filed for a homestead exemption for property taxes on two residences, contrary to state law which allows an individual to assert the claim as to only one principal residence. The Commission determined that the judge's denial of impropriety based on a lack of knowledge regarding the matter was untenable, as a judge, who is an attorney, should know to review legal documents with knowledgeable counsel, to obtain an understanding of the documents. The Commission noted that in any event, the affidavit signed by the judge to claim the homestead exemption on the second house included simple phrases and inquiries that should have caused even a layman to question the propriety of executing the document, when another home was already claimed as a principal residence.

The judge's execution of the document was an improper act that would not have occurred if a minimal amount of care was taken when preparing and signing the form. However, the Commission, in resolving the matter, acknowledged that the judge took action to remedy the improper conduct immediately upon learning that one could not claim the homestead exemption on two residences.

**8. *Allowing Relationships to Influence Judicial Conduct or Judgment***

- A judge issued a PPO against an individual, at the request of a secretary in a law office in which the judge had worked when the judge was an attorney. The judge went to some lengths to facilitate service of the PPO after it was issued, and repeatedly (and improperly) advised the PPO petitioner of the status of his attempts to facilitate service. The Commission noted that the judge's actions raised concerns regarding his/her independence and impartiality, and an appearance of impropriety.
- The Commission reproached a magistrate who issued a search warrant presented by a police officer related to the judge by marriage. The Commission determined that the magistrate's failure to disqualify himself/herself was in violation of MCR 2.003 (C) (1)(g) and MCJC Canon 2 (C), which require the magistrate not to allow family, social or other relationship to influence judicial conduct or judgment.

## ***9. Abuse of Prestige of Office Based on Social Relationship***

- The Commission reproached a judge for issuing a letter containing an endorsement of a person who was seeking an appointment to a position that would ultimately be filled by a public election. The letter included a judicial title and the judge's court address, so that there was no question that a judge was supporting the candidate for the appointment. Contrary to the judge's assertion to the Commission, the letter was not merely a private reference for the position. It was sent to all of the members of a board that governed an association of school districts, involving the selection of a person to hold a very public position. The Commission determined the judge was intending to use the judge's judicial office to sway the appointment, which was improper.

## ***10. Improper Campaign/Political Activity***

- The Commission rebuked a judge for the judge's own as well as the judge's family's behavior during a re-election campaign. The conduct included verbal confrontations and physical contact with his/her opponent at various campaign functions and the polls. Such behavior violated MCJC Canon 7B (1), which requires a judge to maintain the dignity appropriate to judicial office, and Canon 2A, which calls for a judge to encourage members of the judge's family to adhere to the same standards of political conduct that apply to the judiciary.
- The Commission reproached a judge for attempting to pressure a candidate into withdrawing from a judicial race by calling the partners at the candidate's law firm. The judge's colleague and friend was the only other person in the judicial race. The judge's actions violated MCJC Canon 1, which calls for the judiciary to personally observe high standards of conduct, and Canon 2A, which requires judges to avoid all impropriety as well as the appearance of impropriety. The Commission also found that the actions were also in violation of Canon 2C and MCR 9.205(B)(1)(e) in that the judge had used the prestige of the judge's office to advance the personal interests of the judge's colleague.

## ***11. Improper Charitable Conduct***

- A judge was reproached regarding the judge's participation in the solicitation of donations and funds in a relief effort for victims of a natural disaster. The Michigan Code of Judicial Conduct Canon 5(B)(2) states that a judge should not individually solicit funds for any charitable organization, or use or permit the use of the prestige of the office for that purpose. The Commission found that the judge's involvement in the relief effort violated that canon because the judge's appearance and appeal at a press conference regarding the relief effort, and the use of the judge's name on a website and credit union account



used to solicit funds and donations created the public perception that the judge was personally soliciting donations

- A judge was reproached for having used the court's letterhead to solicit contributions for a charitable youth organization while campaigning for re-election, as the conduct violates Canon 5B(2) of the Code of Judicial Conduct, as the personal solicitation of funds for a charitable cause created the appearance that the organization was being used as a campaign vehicle for free publicity. The practice also violated Canon 2, which requires that a judge avoid impropriety and the appearance of impropriety. The Commission acknowledged that the judge ceased engaging in this practice before the investigation into the matter was completed.

#### ***12. Lack of Candor with the Commission***

- In response to a request for comment issued by the Commission, a judge provided factual depictions of events during a hearing that were in direct conflict with those reflected by the transcript. They included identification of the purpose of the hearing, the issues that were addressed, and the implication of remarks made by the judge and the participants. The Commission noted that the judge's comments to it reflected a failure to cooperate with the Commission in an investigation, pursuant to MCR 9.208(B).

#### ***13. Miscellaneous***

- The Commission determined that a judge's meeting with a person who was a defendant in an ongoing felony criminal case, in his/her judicial office, and allowing that same defendant (who was a suspended attorney) access to areas of the courthouse that are restricted to counsel, created an appearance of impropriety.

## V. COMMISSION ORGANIZATION, STAFF AND BUDGET

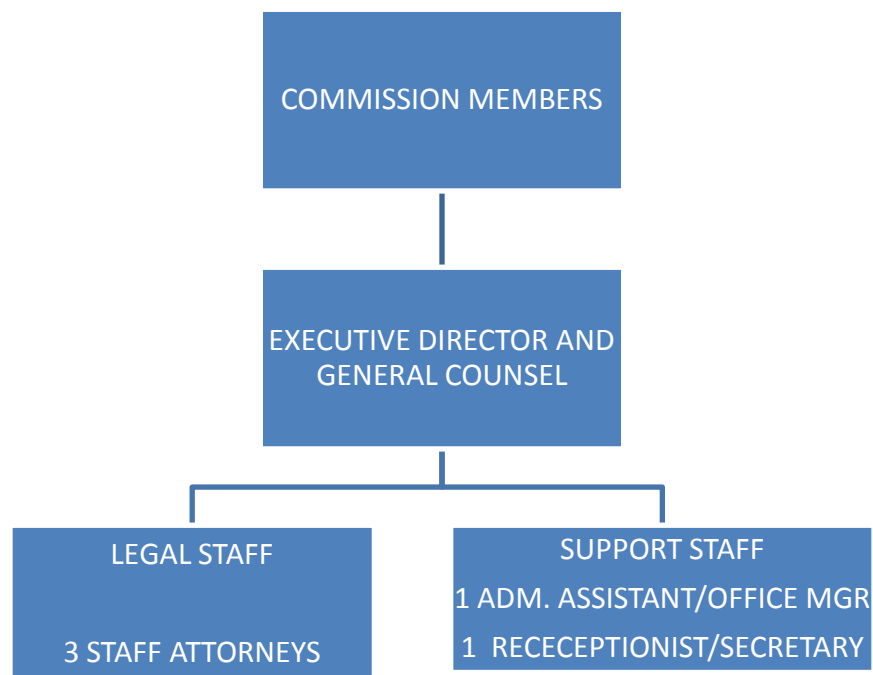
### A. COMMISSION ORGANIZATION AND STAFF

The Commission has 6 staff positions, including the Executive Director, 3 staff attorneys and 2 support staff.

The Executive Director and General Counsel is hired by, and reports directly to the Commission. The Executive Director oversees the intake and investigation of complaints and is the examiner handling the formal proceedings. The Executive Director is also the primary liaison between the Commission and the judiciary, the public, and the media. Paul J. Fischer has served as Executive Director and General Counsel since January 1, 2001.

The Commission's legal staff is responsible for the evaluation and investigation of grievances, and serves as associate-examiners during formal proceedings. The Commission's legal staff is comprised of Senior Attorney Casimir J. Swastek, and Attorneys Glenn J. Page and Margaret N.S. Rynier. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the master. The examiner handles briefing regarding master's reports, and presents cases orally and in writing in hearings before the Commission and the Michigan Supreme Court.

The Commission's support staff is comprised of Administrative Assistant-Office Manager, Camella Thompson; and Receptionist-Secretary Celeste R. Robinson. All Commission staff members are state employees.



## B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2011 fiscal year (October 1, 2010–September 30, 2011), the Commission spent \$918,398, which was \$8,602 under budget. The unused portion of the budget was returned to the funding unit. The Commission continues to do its part to keep its expenditures to a minimum.

